

Before the
Administrative Hearing Commission
State of Missouri



STATE BOARD OF NURSING,

Petitioner,

vs.

RUTH MONTGOMERY,

Respondent.

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No. 14-0165 BN

DECISION

Ruth Montgomery is subject to discipline because she removed oxygen from a patient against a physician's order and failed to note this removal of oxygen on the patient's chart.

Procedure

On February 3, 2014, the State Board of Nursing ("Board") filed a complaint seeking this Commission's determination that cause exists to discipline Montgomery's license as a registered nurse ("RN"). On February 7, 2014, Montgomery was served with a copy of the complaint and our notice of complaint/notice of hearing by certified mail. On March 24, 2014, Montgomery filed her answer.

On May 2, 2014, the Board filed a motion for summary decision. Regulation 1 CSR 15-3.446(6)¹ provides that we may decide this case without a hearing if the Board establishes facts

¹ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

that Montgomery does not dispute and entitle the Board to a favorable decision. The Board cites the request for admissions that was served on March 26, 2014. Montgomery did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.² Such a deemed admission can establish any fact or any application of law to fact.³ That rule applies to all parties, including those acting *pro se*.⁴ Section 536.073⁵ and our Regulation 1 CSR 15-3.420(1) apply that rule to this case. We gave Montgomery until May 19, 2014 to respond to the motion but she filed nothing. Therefore, the following facts are undisputed.

Findings of Fact

1. Montgomery was licensed by the Board as an RN at all times relevant to these findings.
2. On June 27-28, 2013, while on duty as an RN, Montgomery was assigned to care for patient K.P.
3. Patient K.P was terminal and received oxygen through a tracheostomy as a comfort measure.
4. The oxygen provided to patient K.P. was ordered by a physician.
5. On June 28, 2013, Montgomery removed the oxygen being administered to patient K.P. at the request of patient K.P.'s significant other. Montgomery did not have a physician's order to remove the oxygen and did not notify a physician before its removal. Montgomery also failed to note in patient K.P.'s chart that she removed the oxygen.
6. Patient K.P. died as a result of the removal of oxygen.

² *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

³ *Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

⁴ *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

⁵ RSMo 2000. Statutory references, unless otherwise noted are to RSMo Supp. 2013.

Conclusions of Law

We have jurisdiction to hear this complaint.⁶ The Board has the burden of proving that Montgomery has committed an act for which the law allows discipline.⁷

Montgomery admitted the facts, but we must “separately and independently” determine whether such facts constitute cause for discipline.⁸ Therefore, we independently assess whether the facts admitted allow discipline under the law cited. The Board alleges that there is cause for discipline under § 335.066:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

* * *

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by sections 335.011 to 335.096;

* * *

(12) Violation of any professional trust or confidence[.]

Professional Standards – Subdivision (5)

In its complaint, the Board limits its allegations under this subdivision to misconduct, misrepresentation, and dishonesty. Therefore, we limit our analysis under this subdivision to these issues.

⁶ Section 621.045.

⁷ *Missouri Real Estate Comm’n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁸ *Kennedy v. Missouri Real Estate Commission*, 762 S.W.2d 454, 456-57 (Mo. App., E.D. 1988).

Misconduct means “the willful doing of an act with a wrongful intention[.] intentional wrongdoing.”⁹ Montgomery’s removal of oxygen from patient K.P., contrary to a physician’s order, was a willful act. We may infer the requisite mental state from the conduct of the licensee “in light of all surrounding circumstances.”¹⁰ Also, direct evidence of intent is rarely susceptible to direct proof and therefore must generally be established by circumstantial evidence.¹¹ Based on her actions, we infer that Montgomery’s intent was to disobey a physician’s order. This is a wrongful intention. Accordingly, we find she committed misconduct.

Misrepresentation is a falsehood or untruth made with the intent and purpose of deceit.¹² As previously stated, the Board provided no evidence regarding Montgomery’s intent for withdrawing oxygen from patient K.P. Therefore, we have no evidence that Montgomery committed this act with the intent and purpose of deceit. We do not find Montgomery made a misrepresentation.

Dishonesty is a lack of integrity or a disposition to defraud or deceive.¹³ After withdrawing oxygen from patient K.P., Montgomery failed to note this in the patient’s chart. By failing to note this in the chart, she allowed suspicion of removing the oxygen to fall upon anyone in the facility at the time it occurred. This ultimately hides the fact that she is the one who removed the oxygen, which indicates a disposition to deceive the health care facility where she was employed as an RN. Therefore, Montgomery acted with dishonesty.

Montgomery is subject to discipline under § 335.066.2(5) for misconduct and dishonesty.

⁹*Missouri Bd. for Arch’ts, Prof’l Eng’rs & Land Surv’rs v. Duncan*, No. AR-84-0239 (Mo. Admin. Hearing Comm’n Nov. 15, 1985) at 125, *aff’d*, 744 S.W.2d 524 (Mo. App., E.D. 1988).

¹⁰*Duncan*, 744 S.W.2d at 533.

¹¹*State v. Agee*, 37 S.W.3d 834, 837 (Mo. App., S.D. 2001)

¹²*Id.* at 794 (11th ed. 2004).

¹³MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 359 (11th ed. 2004).

Professional Trust – Subdivision (12)

Professional trust is the reliance on the special knowledge and skills that professional licensure evidences.¹⁴ It may exist not only between the professional and his clients, but also between the professional and his employer and colleagues.¹⁵ Patients must trust RNs to comply with a physician's order. Likewise, physicians must trust RNs to comply with their orders. By removing oxygen from patient K.P. against a physician's order, Montgomery violated professional trust. She is subject to discipline under § 335.066.2(12).

Summary

Montgomery is subject to discipline under § 335.066.2(5) and (12). We cancel the hearing.

SO ORDERED on June 11, 2014.

/s/ Sreenivasa Rao Dandamudi

SREENIVASA RAO DANDAMUDI
Commissioner

¹⁴*Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

¹⁵*Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).